

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES PAUL BUTLER,

Defendant-Appellant.

UNPUBLISHED

September 19, 2000

No. 214174

Oakland Circuit Court

LC No. 98-157910-FC

Before: Gribbs, P.J., and Neff and O’Connell, JJ.

PER CURIAM.

Defendant was convicted by a jury of one count of indecent exposure, MCL 750.335a; MSA 28.567(1), and he pleaded guilty to being a sexually delinquent person, MCL 750.10a; MSA 28.200(1). Defendant was sentenced to one year to life in prison. Defendant appeals as of right. We affirm in part and remand for resentencing.

I

Defendant argues that the trial court erred in denying his motion to dismiss for violation of the 180-day rule. A trial court’s attribution of delay under the 180-day rule is reviewed for clear error. *People v Norman Crawford*, 232 Mich App 608, 612; 591 NW2d 669 (1998). We find no error.

“The 180-day rule, codified at MCL 780.131; MSA 28.969(1), states that an inmate of the Department of Corrections must ‘be brought to trial within 180 days’ after the prosecution is given notice of untried charges against him.” *Crawford, supra* at 612, quoting MCL 780.131(1); MSA 28.969(1)(1).

The 180-day period commences when either

(a) ... the prosecutor knows that the person charged with the offense is incarcerated in a state prison or is detained in a local facility awaiting incarceration in a state prison, or

(b) ... the Department of Corrections knows or has reason to know that a criminal charge is pending against a defendant incarcerated in a state prison or detained in a local

facility awaiting incarceration in a state prison. [*Crawford, supra* at 612-613, quoting MCR 6.004(D)(1)(a), (b).]

However, the 180-day rule does not require that trial commence within 180 days: “[W]hen a pretrial delay greater than 180 days occurs, the rule is still satisfied if the prosecutor has taken good-faith action within that period to promptly ready the case for trial.” *Crawford, supra* at 612, citing MCR 6.004(D)(1); see also *People v Hendershot*, 357 Mich 300, 303-304; 98 NW2d 568 (1959); *People v Bell*, 209 Mich App 273, 278; 530 NW2d 167 (1995). “If a prosecutor takes such good-faith action, jurisdiction over the case will not be lost unless the initial action is followed by an inexcusable delay that evidences an intent not to bring the case to trial promptly.” *People v Bradshaw*, 163 Mich App 500, 505; 415 NW2d 259 (1987).

In this case, the complaint was issued on September 16, 1997. Defendant was incarcerated in a state prison at that time. A preliminary examination was held in the district court on October 3, 1997, seventeen days later. Defendant waived the 180-day rule for purposes of obtaining a forensic examination. The forensic examination was delayed and rescheduled several times. On January 23, 1998, the forensic examination was begun. Because a witness was unavailable, the examination was adjourned until February 6, 1998. Defendant’s arraignment in the circuit court was scheduled for February 23, 1998. On that date, defendant was not present. Defendant was still at the Department of Corrections. The arraignment was rescheduled for March 3, 1998, at which defense counsel again requested a forensic examination. Ultimately, on April 15, 1998, defendant decided not to submit to the forensic examination.

We find no violation of the 180-day rule. A delay attributable to the defendant can negate a violation of the 180-day rule. *People v Ronald Crawford*, 161 Mich App 77, 83; 409 NW2d 729 (1987), remanded on other grounds 437 Mich 856 (1990). Defendant made two requests for a forensic examination, in both the district court and the circuit court. The trial court properly attributed these delays related to the forensic examination to defendant. Time attributable to an adjournment requested by a defendant should not be charged against the prosecution. *People v Jones (On Rehearing After Remand)*, 228 Mich App 191, 196; 579 NW2d 82, remanded 458 Mich 862; 587 NW2d 637 (1998). Defense counsel counted ninety-five days from defendant’s withdrawal of his request for a forensic examination, April 15, 1998, to defendant’s trial date, July 20, 1998. Any delay attributable to the prosecution falls well within 180 days.

II

Defendant next argues that the trial court erred in denying his motion for a directed verdict. This Court reviews de novo a trial court’s denial of a defendant’s motion for a directed verdict. *People v Mayhew*, 236 Mich App 112, 124; 600 NW2d 370 (1999). This Court considers the evidence presented by the prosecution in the light most favorable to the prosecution to determine whether a rational trier of fact could find that the essential elements of the crime charged were proven beyond a reasonable doubt. *Id.* at 124-125.

Defendant was charged with indecent exposure, MCL 750.335a; MSA 28.567(1). The statute provides in relevant part: “Any person who shall knowingly make any open or indecent exposure of his or her person or of the person of another shall be guilty of a misdemeanor” MCL 750.335a; MSA 28.567(1); *People v Vronko*, 228 Mich App 649, 653; 579 NW2d 138 (1998). The prosecution was required to establish that, at the time and place alleged, defendant knowingly exposed his penis in a public place under circumstances in which another person might reasonably have been expected to observe it. CJI2d 20.33. Andrea LaRose saw a white male masturbating in the stairwell of a parking garage. LaRose did not see the man’s face. Minutes later, LaRose relayed to Phillip Crawford what had happened. Crawford found defendant in the same stairwell pulling up his pants. Defendant fled when confronted by Crawford. During the ensuing chase, defendant said to Crawford, “Come on, man, let me go.” After defendant was arrested, he asked the police officer if he could “let this one go.” Viewing this evidence in the light most favorable to the prosecution, we conclude that a reasonable jury could find the elements of the offense proven beyond a reasonable doubt. The trial court did not err in denying defendant’s motion for a directed verdict.

III

Defendant also challenges the sufficiency of the evidence presented. Defendant claims that the prosecution presented insufficient evidence of identity to establish that defendant was the man whom LaRose observed masturbating. We disagree. “When reviewing the sufficiency of the evidence in a criminal case, this Court must view the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could have found the essential elements of the crime proved beyond a reasonable doubt.” *Vronko, supra* at 654, citing *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748, amended 441 Mich 1201 (1992). “Circumstantial evidence and reasonable inferences arising therefrom may be sufficient to prove the elements of a crime.” *People v Nelson*, 234 Mich App 454, 459; 594 NW2d 114 (1999). When deciding this issue, this Court should not interfere with the jury’s role of determining the weight of the evidence or the credibility of the witnesses. *Wolfe, supra* at 514-515.

LaRose testified that she observed a white male masturbating in a stairwell of the parking garage. LaRose saw the man’s body from his chest to his knees. About fifteen minutes later, LaRose described the incident to Crawford, who ran to the parking garage and found defendant in the same stairwell, pulling up his pants. When Crawford asked defendant what he was doing, defendant ran. Defendant asked Crawford to let him go. After defendant was arrested, he asked the police officer to “let this one go.” Although the evidence is largely circumstantial, when it is viewed in the light most favorable to the prosecution, we find it to be sufficient to establish that defendant was the man who exposed himself to LaRose.

IV

Defendant next argues that his one-year minimum sentence is invalid under the indecent exposure statute. We agree. Whether the trial court failed to follow the sentencing requirements under the statute is a question of law, which this Court reviews de novo. *People v Alexander*, 234 Mich App 665, 675; 599 NW2d 749 (1999).

The indecent exposure statute, MCL 750.335a; MSA 28.567(1), provides for an alternate sentencing scheme for persons convicted of indecent exposure as a sexually delinquent person. Under this alternate sentencing scheme, the statute mandates that the proper sentence shall be a term of one day to life in prison. MCL 750.335a; MSA 28.567(1); MCL 750.10a; MSA 28.200(1); *People v Murphy*, 203 Mich App 738, 741; 513 NW2d 451 (1994); *People v Kelly*, 186 Mich App 524, 528-529; 465 NW2d 569 (1990). Plaintiff does not dispute that defendant's one-year minimum sentence is invalid under the statute. Defendant is entitled to be resentenced. See *id.* at 531.

In light of the resolution of this issue, we consider it unnecessary to address defendant's challenge to the proportionality of his sentence. To the extent that defendant argues that a sentence to any term of imprisonment, rather than jail, is disproportionate, we disagree. Considering defendant's extensive criminal history, we conclude that his sentence is proportionate to the circumstances of the offense and the offender, *People v Paquette*, 214 Mich App 336, 344-345; 543 NW2d 342 (1995).

V

Finally, defendant challenges the classification of his offense as a Proposal B felony on the presentence investigation report. This Court reviews issues of statutory interpretation de novo. *Alexander, supra* at 675. The offense of indecent exposure as a sexually delinquent person is a felony. *Murphy, supra* at 748-749. However, it is not among those offenses designated as Proposal B offenses under the statute. MCL 791.233b; MSA 28.2303(3).

Defendant's presentence investigation report indicates that defendant was convicted of a Proposal B offense. At sentencing, defendant challenged the accuracy of this designation. See MCL 771.14(6); MSA 28.1144(6); MCR 6.425(D)(2)(b); *People v Hoyt*, 185 Mich App 531, 533-534; 462 NW2d 793 (1990). The trial court did not resolve the matter. However, because defendant will be resentenced, the trial court must obtain a reasonably updated presentence report. *People v Triplett*, 407 Mich 510, 511; 287 NW2d 165 (1980); *People v Foy*, 124 Mich App 107, 110; 333 NW2d 596 (1983). The error in the presentence investigation report, designating defendant's offense as a Proposal B offense, should be corrected in the trial court upon remand for resentencing.

We affirm defendant's conviction. Defendant's sentence is vacated, and this case is remanded for resentencing. We do not retain jurisdiction.

/s/ Roman S. Gibbs

/s/ Janet T. Neff

/s/ Peter D. O'Connell